Filed 1/18/19 In re R.M. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re R.M., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. R.M., Defendant and Appellant.	G055329 (Super. Ct. No. 16DL2217) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Lewis W. Clapp, Judge. Affirmed.

Frank J. Torrano, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie L. Garland, Assistant Attorney General, Scott Taylor and Marilyn L. George, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court petition alleged the minor, R.M., committed a robbery (Pen. Code, §§ 211, 212.5, subd. (c)), unlawfully possessed a firearm (Pen. Code, § 29610), carried a concealed and loaded firearm (Pen. Code, § 25400, subds. (a)(2), (c)(6)), and resisted and delayed a police officer in the performance of his duty (Pen. Code, § 148, subd. (a)(1)). The juvenile court found the robbery and possession of a concealed and loaded firearm true. It found the other two charges not true and dismissed them. The court declared minor a ward of the court and ordered him committed to juvenile hall or another appropriate facility for two years as a condition of probation.

On appeal, minor contends statements he made to police should not have been introduced into evidence because they were obtained in violation of *Miranda v. Arizona* (1966) 384 U.S. 436; without the statements, the court's finding is not supported by the evidence; and the court erred in failing to obtain a current social study on minor prior to making the dispositional orders. We find the court did not err in admitting minor's statements to police and counsel for minor impliedly waived his right to a current social study. Therefore, we affirm.

FACTS

Juan Osorio was walking home on October 24, 2016, at approximately 2:00 a.m., when two young males ran across the street and stopped in front of him. Osorio initially testified the heavier of the two men stood in front of him, blocking his path. He later said the heavier male stood to his left, about five feet from him and two or three feet behind the skinnier male. The skinnier of the males told Osorio to hand over all his "stuff." Osorio threw a coke bottle at the males. The skinnier one then pulled out a gun and pointed it at Osorio. Although Osorio stated minor is the one who pulled out the gun, other evidence showed minor was the heavier of the two assailants.

Osorio was told to give the males all his "stuff" if he did not want to die. He took out his cash, $70 to $80, and threw it at the males. The one with the gun asked if that was all the money. Osorio said it was and the one with the gun cocked it and pointed

it at Osorio. The armed male told the other to count the money. Then the one with the gun told Osorio to run. He did as he was told.

Osorio said the one with the gun, the skinnier of the two, did all the talking. He added that the heavier one, the one without a gun, appeared to be nervous and the one with the gun was in charge.

After Osorio stopped running, he looked back and called 911 when he saw the males had not followed him. The tape of the call was played in court. Osorio told the operator "the skinnier one had the gun."

While Officer Gerardo Raya was responding to the robbery call, he saw two males walking, one of whom pointed at Raya's patrol vehicle. Raya contacted Osorio and obtained a description of the robbers. The male who had pointed at Raya's patrol vehicle matched one of the descriptions, so Raya had other officers respond to where he had seen the two males.

Thirty minutes later, police took Osorio to an in-field showup. He again told police the skinnier of the two had the gun. At trial, he conceded his statement to the police was correct, and he agreed the skinnier male had the gun. Police officers testified the other male at the showup (Jesse) was skinnier than minor. Another officer testified Osorio identified Jesse as the one with the gun.

When Raya arrived where minor and Jesse had been detained, he said he saw minor resist officers' attempt to handcuff him. An officer placed minor in a "carotid restraint hold" whereby blood flow and oxygen to the brain is cut off. In minor's pockets, the police found an unloaded Ruger LC9 handgun, a magazine containing two live rounds, and $50.

After the show-up, minor was taken to the hospital where he was released when he refused treatment. Police then transported minor to the police station and placed him in a small interrogation room. One officer said the first interrogation occurred around 3:00 or 4:00 a.m. Another said the interview was closer to 4:00 or 4:30 a.m.

Raya testified the first interview was recorded on a hand-held device issued by the police department. He said an attempt was made to upload the audio of the interrogation onto the department's system, but he could not now locate the recording. According to Raya, the act of uploading erases all recordings from the hand-held device.

Raya said the recording contained the *Miranda* advisement and minor's implied waiver. Raya stated he read minor the department approved *Miranda* advisement form. After advising minor of each of his rights, Raya asked minor if he understood and minor said he did. Raya did not ask minor if he wanted to talk about the incident; he just started asking questions and minor answered. The interrogation lasted about 15 minutes.

Minor said he found the gun on a bike trial. He said the other male took the gun at some point and minor took it back at another, but Raya did not determine when those events occurred. Minor denied pointing the gun at anyone and claimed not to remember anything else. He stated he had consumed marijuana and taken Xanax. Raya did not ask minor if he was feeling the effects of any drug while they were talking, but stated minor made sense when he spoke. According to Raya, as he and Officer Maetta were leaving the interrogation room, minor said he wanted to speak with Maetta.

Maetta, on the other hand, said minor started talking to him about the incident when he returned to the interrogation room to move minor to another location, although Maetta did not know how much time passed between the two interviews, but it was at least half an hour. Minor told Maetta he wanted to talk about the incident. Maetta turned on his recording device. He did not readvise or remind minor of his *Miranda* rights. The recording was played for the court.

During the second interrogation, minor said he found the gun with Jesse. They walked more than five miles, until they encountered Osorio, and Jesse walked up to Osorio and said, "[g]ive me your shit." Minor also described a subsequent contact with a "Good Samaritan" who saw them "mug[]" Osorio. The "Good Samaritan" told them to give Osorio his money back. Minor and Jesse ran and the police found them.

During the second interrogation, minor admitted having robbed Osorio. He said Jesse had the gun and demanded Osorio's money, although he denied the gun was ever pulled on Osorio. Toward the end of the questioning, minor stated, "we were so high on marijuana. That I was just like, I felt so different. . . . I felt mentally retarded."

As stated above, the juvenile court found the robbery and possession of a concealed and loaded firearm true. It found the other two charges not true and ordered them dismissed. The court declared minor a ward of the court and granted him probation on terms that included two years in custody with credit for 243 days already served.

DISCUSSION

1. *Admission of Minor's Statements From His Second Interrogation*

Minor was advised of his *Miranda* rights and thereafter made statements concerning the robbery and the gun. He does not contest admission of those statements. But minor contends the statements he made during the second interrogation, including his admissions that he and Jesse robbed Osorio, were inadmissible because Maetta did not readvise him or remind him of his *Miranda* rights before questioning him again.

"Under the familiar requirements of *Miranda*, designed to assure protection of the federal Constitution's Fifth Amendment privilege against self-incrimination under 'inherently coercive' circumstances, a suspect may not be subjected to custodial interrogation unless he or she knowingly and intelligently has waived the right to remain silent, to the presence of an attorney, and to appointed counsel in the event the suspect is indigent. [Citations.]" (*People v. Sims* (1993) 5 Cal.4th 405, 440.)

"In reviewing *Miranda* issues on appeal, we accept the trial court's resolution of disputed facts and inferences as well as its evaluations of credibility if substantially supported, but independently determine from undisputed facts and facts found by the trial court whether the challenged statement was legally obtained. [Citations.]" (*People v. Smith* (2007) 40 Cal.4th 483, 502.)

There is no dispute, minor was in custody both times he was questioned by police. He had been arrested for the robbery, taken to the police station for questioning, and was handcuffed to the wall in the interrogation room.

When an in-custody suspect makes a statement to police during questioning, the prosecution bears the burden of proving by a preponderance of the evidence the suspect waived his rights. (*People v. Williams* (2010) 49 Cal.4th 405, 425.) "In general, if a custodial suspect, having heard and understood a full explanation of his or her *Miranda* rights, then makes an uncompelled and uncoerced decision to talk, he or she has thereby knowingly, voluntarily, and intelligently waived them. (*Colorado v. Spring* (1987) 479 U.S. 564, 574.)" (*People v. Cunningham* (2015) 61 Cal.4th 609, 642.)

An express waiver is not required. (*Ibid*.) A waiver may be implied from all the surrounding circumstances. (*Berguis v. Thompkins* (2010) 560 U.S. 370, 384.) "As a general proposition, the law can presume that an individual who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford. [Citations.]" (*Id*. at p. 385.)

Here, officers advised of his *Miranda* rights. After he was read each right, he was asked if he understood that right. Minor explicitly stated he did. He thereafter spoke with the officers about the robbery and gun. Minor does not contend he did not understand his rights. That he immediately spoke with the officers about the incident after expressly acknowledging his rights permits the inference "that he knew what he gave up when he spoke." (*Berghuis v. Thompkins*, *supra*, 560 U.S. at p. 385.)

The initial interrogation lasted about 15 minutes. Minor either asked to continue speaking with Maetta or told Maetta he wanted to speak more about the incident when Maetta returned to the interrogation room to move him. Although Maetta does not recall how long after the first interrogation before he returned to the interrogation room, he said it was at least a half-hour and minor remained handcuffed during that time.

Minor contends the statements he made during the second interrogation were obtained in violation of *Miranda*, because Maetta was required to readvise him of his rights, or at least remind him of the prior advisements prior to obtaining any statements in a second interrogation. We disagree.

Preliminarily we note the audio of the second interrogation was played for the court. Notwithstanding the fact minor had been placed in a "carotid restraint hold," cutting off the flow of blood and oxygen to the brain for a short period of time earlier that evening and claimed to have taken drugs prior to the robbery, after listening to the audio of the second interrogation, the juvenile court found the minor's demeanor and the way he spoke demonstrated his statements were voluntary.

When a suspect invokes his or her right to counsel, he or she is not subject to further questioning until counsel has been made available, "unless the accused himself initiates further communication, exchanges, or conversations with the police." (*Edwards v. Arizona* (1981) 451 U.S. 477, 485.) If questioning a suspect when he or she initiates communication after an earlier invocation of his or her rights is proper, it follows that a suspect's request to continue to speak with one of the interrogating officers at the conclusion of the initial interrogation does not require a further advisement or reminder of the rights the suspect waived minutes earlier. Consequently, if minor requested to continue to speak with Maetta as soon as the initial interrogation was over, no further advisement or reminder was needed.

Neither was further advisement or reminder needed if minor initiated communication about the incident with Maetta when the officer returned to the interrogation room to move minor. Again, according to Maetta, minor initiated the second round of questioning just over a half-hour after the first round ended.

People v. Smith, *supra*, 40 Cal.4th at page 499, is instructive. There police advised the defendant of his *Miranda* rights prior to his initial interrogation. He waived his rights and spoke to police about the murder he was suspected of committing. (*Id*. at p.

500.) A second interrogation was conducted less than 12 hours later. During the second interrogation, a detective asked the defendant if he remembered being read his *Miranda* rights during the earlier questioning. The defendant said he "'pretty much'" remembered and was willing to talk. (*Ibid*.)

The *Smith* court started its analysis of whether a readvisement was required by observing: "This court repeatedly has held that a *Miranda* readvisement is not necessary before a custodial interrogation is resumed, so long as a proper warning has been given, and 'the subsequent interrogation is "reasonably contemporaneous" with the prior knowing and intelligent waiver.' [Citations.]" (*People v. Smith*, *supra*, 40 Cal.4th at p. 504.) In determining whether readvisement is required depends upon a number of factors, including "1) the amount of time that has passed since the initial waiver; 2) any change in the identity of the interrogator or location of the interrogation; 3) an official reminder of the prior advisement; 4) the suspect's sophistication or past experience with law enforcement; and 5) further indicia that the defendant subjectively understands and waives his rights. [Citation.]" (*Ibid*.)

In the present case, the second interrogation occurred "at least" a half hour after the first interrogation ended. The amount of time that passed here is substantially shorter than the approximate 12-hour period found not to require readvisement in *Smith*. (*People v. Smith*, *supra*, 40 Cal.4th at p. 504.) The very brief passage of time in this matter weighs heavily in favor of the juvenile court's finding readvisement was not required.

Minor was initially questioned by Maetta and Raya. The second round of questioning—at minor's request, according to Maetta—occurred because minor requested to continue to speak with Maetta. The fact that the second session of questioning was conducted by one of the original questioners, but not both, does not aid minor. The advisement and implied waiver took place in Maetta's presence. That the same officer undertook to question minor a second time—again, at minor's request—also

weighs in favor of not requiring a second advisement. It is not as if minor finished one round of questioning and then, thinking that was finished, he was subsequently approached by another, different officer who started questioning him all over again. Additionally, the second interrogation took place in the same room as the first, without minor ever leaving the interrogation room.

Prior to being questioned by Maetta, minor was not reminded of the rights he previously waived an hour or so earlier. Neither was there any evidence minor had a number of prior contacts with the police or was sophisticated in dealing with police. However, he had previously waived his rights and it was he who initiated the second round of interrogation, not the police. Weighing all these factors, the trial court did not err in cocluding Maetta did not violate *Miranda* and its progeny by failing to readvise minor of his rights prior to speaking about the incident with minor, at minor's request.

Because we conclude the trial court did not err in finding minor's *Miranda* rights were not violated, we need not address his further contention that the evidence was insufficient to support his convictions without considering statements unlawfully obtained during the second round of questioning.

2. *The Lack of a Current Social Study*

The prosecutor initially sought to have minor tried as an adult. However, at the conclusion of the fitness hearing, which included submission of a 35-page fitness report prepared by the probation department (Welf. & Inst. Code, § 707, subd. (a)(2)),[1] the court found minor to be a fit subject for treatment in the juvenile court system. The fitness report was filed with the juvenile court on February 23, 2017. The trial was held less than four months later, in June 2017. The court found the robbery and the concealed firearm charges true, and dismissed the remaining charges on June 19, 2017.

[1] All undesignated statutory references are to the Welfare and Institutions Code.

After deciding the evidence supported two charges, the court moved to the dispositional phase of the proceedings. It noted minor had already been found fit to be treated by the juvenile court system at the section 707 hearing. Defense counsel immediately stated the probation report prepared for the fitness hearing was "a very thorough, very lengthy report." Counsel added the report's recommendation was for minor to remain in the juvenile court system, minor has no prior section 602 determinations,[2] and has never been in custody before. The juvenile court observed it appeared minor's counsel preferred immediate disposition. The juvenile court fairly read counsel's desire. Counsel pointed out minor had been in custody since his arrest on this matter in October 2016. It was apparent minor's counsel desired a local time commitment and appeared to be hoping for a credit time served probationary term.

The court asked the prosecutor if he thought an additional disposition report was necessary and stated the court did not believe one was required given the detailed report the court had before it. The prosecutor did not answer, but defense counsel pointed out minor obtained his GED since the last report, had been on the honor roll multiple times, and had made favorable adjustments after his initial struggles with custody. The court stated minor's focus on his education boded well for him.

Despite what appeared to be defense counsel's urging for an immediate disposition, the court put the matter over for eight days so it could review the section 707 report again, "in particular some of that information that was provided regarding sophistication, history, attempts at rehabilitation, that kind of thing." The court put the matter over for disposition, and directed the probation department to prepare a report on the minor's progress in custody, including "how he's doing in his academics."

---

[2] "Except as provided in Section 707, any minor who is between 12 years of age and 17 years of age, inclusive, when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court." (§ 602.)

Eight days later, the court held the dispositional hearing. The probation department submitted a one-page updated report. It stated staff from juvenile hall indicated minor attained the highest level that can be earned in custody and his behavior improved since he initially went into custody. The report noted minor had no major rule violations since March of 2017, and confirmed he earned his GED. while in custody. Minor's counsel reminded the court it had not ordered a full report from the probation department because the court already had an "extensive report" before it. Counsel did not object to the court proceeding without a dispositional report.

The prosecutor urged the court to commit minor to the Division of Juvenile Justice, but the court rejected the suggestion and granted minor probation, including a two-year commitment to juvenile hall or other appropriate facility with credit for the 243 days minor already served in custody. Minor now claims the matter must be remanded for further dispositional hearing because the juvenile court did not obtain a current social study after finding minor a ward of the court. We are not persuaded.

Pursuant to section 702, when a juvenile court determines a minor is a person described by section 602, the court must enter its finding in the minutes and proceed to hear the issue of the proper disposition of the minor's case. Section 280 makes it "the duty of the probation officer to prepare for every hearing on the disposition of a case provided by Section . . . 702, a social study on the minor, containing such matters as may be relevant to a proper disposition of the case. The social study shall include a recommendation for the disposition of the case." Section 706 requires the juvenile court to receive the current social study into evidence, in addition to other offered evidence prior to ordering a disposition. Additionally, California Rules of Court, rule 5.785 requires the probation officer to prepare and file a social study of the minor with a recommendation for disposition. (Cal. Rules of Court, rule 5.785(a).) Prior to disposition, the juvenile court "must receive in evidence and consider the social study." (Cal. Rules of Court, rule 5.785(b).)

A current social study is mandatory, unless waived. (*In re Eugene R.* (1980) 107 Cal.App.3d 605, 614.) Here, minor's counsel impliedly waived the requirement of a current social study report. She attempted to have the court issue its dispositional orders *immediately* following the jurisdictional hearing, a time when there would not have been a dispositional study, as jurisdiction—a finding that minor violated the law—had not been determined until earlier that day. Even a week later, when the court was prepared to issue dispositional orders, defense counsel stated she was ready to proceed, though she knew the only report prepared after jurisdiction had been established was one-page long and contained only an update "as to the minor's performance in custody more recently." Because counsel impliedly waived a current social study, the court did not err in not ordering a current social study pursuant to section 280.

DISPOSITION

The judgment is affirmed.

THOMPSON, J.

WE CONCUR:

ARONSON, ACTING P. J.

GOETHALS, J.